IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.366 of 2003

Judgment reserved on 9.3.2007

Date of decision 19.4.2007

Ujagar Singh Appellant

Versus

State of H.P. Respondent

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr.Chandranarayana Singh, Advocate.

For the respondent: Mr.Ashutosh Burathoki, Addl. Advocate General.

V.K.Ahuja, J.

This is an appeal filed by the appellant against the judgment of the court of learned Special Judge, Sirmaur District at Nahan dated 1.8.2003, vide which the appellant was held guilty under Section 409 IPC and under Section 13(2) of the Prevention of Corruption Act,1988 and was sentenced as under :

Section 409 IPC	Rigorous imprisonment for 3 years and fine of Rs.5000/-. In default of payment of fine, simple imprisonment for 6 months.
Section 13(2) of the Prevention of Corruption Act.	R.I. for 2 years and fine of Rs.2000/-.In default of payment of fine, S.I. for 3 months.

Briefly stated the facts of the case are that the appellant hereinafter also referred to as the accused was posted as Inspector, Food and Supplies in Shillai during the year 1995. He was supplied 70 bags of wheat on 18.9.1995 and again 84 and 85 bags of wheat through two

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[1] Whether reporter of local papers are allowed to see the judgment ? Yes.

trucks on 31.8.1995. The appellant acknowledged the receipt of the wheat stock as per receipts dated 21.9.1995 and 23.9.1995 and the payments were made to the contractor for transportation charges. The appellant was transferred to Kaza on 12.9.1995 and was relieved in absentia on 29.9.1995 but he did not hand over the charge until 8.2.1996. A Committee was therefore formed by Deputy Commissioner on request of Director, Food & Supplies to take the record and stock into possession after breaking open the locks, which were broken and the taking of the stock of wheat was done. No wheat stock was found and the concerned registers regarding the stocks were also not found available.

It was further observed that during the period 31.8.1995 to 18.9.1995 the appellant misappropriated the government wheat stock of 233-25-220 quintals amounting to Rs.64,292/-. This amount was subsequently deposited by the appellant during March,1996 in Government treasury at Rajgarh when he was asked by his superiors. A complaint was lodged by Director, Food & Supplies, Nahan and case was registered and after investigation the challan was filed before the learned Magistrate, who committed the case to learned Special Judge. The charge under both the sections as detailed above was framed and on conclusion of the trial the appellant was held guilty, convicted and sentenced as detailed above.

I have heard Mr. Mr.Chandranarayana Singh, learned counsel for the appellant and Mr.Ashutosh Burathoki, learned Additional Advocate General for the respondent-State and have also gone through the record carefully.

The submissions made by learned counsel for the appellant were that on the relevant date i.e. 20.9.1995 the appellant was on medical leave and he never received the wheat stock. It was also submitted that after departmental enquiry his leave was regularized and thereafter he was on

a long leave of 103 days. It was also submitted that the material witness, namely, driver of the truck who brought the wheat stock was never examined whose testimony was material. It was also submitted that another material witness, namely, Chowkidar of the godown was not examined to whom the wheat stock might have been handed over. It was further submitted that in so far as the signatures of the appellant on the bills are concerned, these were taken by the department under a pressure and the appellant was compelled to give his signatures. In regard to the deposit of the amount on direction of the Department, it was submitted that no inference can be drawn from deposit of the amount that appellant had admitted his guilt that he had misappropriated the wheat stock and failed to deposit the cash of the proceeds of the wheat.

On the other hand, the submissions made by learned Additional Advocate General for the State were that there are receipts on record which show that the appellant had himself received the wheat stock sent to him through trucks. It was submitted that the handwriting of the appellant was proved and tallied with his admitted handwritings. In regard to the fact that the appellant was on leave it was submitted that the appellant was very much present there and had submitted a wrong medical leave subsequently and once he was present in the area and was known to the persons being the Inspector of the Civil Supply Department and was present there when the wheat stock was handed over to him and he acknowledged the same by giving the receipt. The mere fact that he might have taken leave subsequently which was sanctioned to him later on is not sufficient to hold that the wheat stock was not received by him. It was also submitted that there was no question of the Department putting pressure upon the appellant and taking signatures on the receipt and since he has clearly admitted the fact that the wheat stock was received by him and he misappropriated the amount and deposited it only on the

direction of the Department, there was temporary embezzlement and he was rightly held guilty, convicted and sentenced by the learned trial court.

The submissions made by both the parties shall be considered while referring to the evidence led in this regard. The prosecution had examined 26 witnesses to substantiate their case. However, I am making a reference to the statements of the witnesses which are material to prove the guilt of the accused.

PW-1 Sridhar Sharma the then District Food & Supplies Officer has stated that the accused was posted as Inspector in Shillai area who was relieved in absentia during 1995. Three trucks of wheat i.e. 225 quintals 25 kgs and 220 grams were dispatched from Nahan to Shillai where the wheat was received by the accused. The cost of the wheat after sale was not deposited by the accused in the government treasury. He thereafter referred the case to his Director, vide letter Ex.PW1/A which is not being referred to since the original was not produced and it was objected to during the examination of the witness. He further stated that the amount was deposited by the accused in February,1996 at Rajgarh though it should have been deposited at Shillai. He stated in cross-examination that a complaint was received from the depot holders that they had not received the quota of wheat from Shillai godown. No suggestions were put to him that the trucks of the wheat mentioned above were never received by the accused or were received by any other person, namely, Chowkidar, or any other official since the accused was on leave on the relevant dates. Therefore the statement of this witness rather goes un-rebutted. PW-2 N.R.Kaundal, Superintendent had proved the original of letter Ex.PW2/A referred to above and therefore it can be read in evidence which shows that all the relevant facts were mentioned therein in regard to the sending of the wheat and forming of Committee and the fact that the amount was

subsequently deposited by the appellant out of his own pocket in the government treasury at Rajgarh.

PW-3 Attar Singh one of the depot holders has stated that they used to receive the wheat stock under PDS scheme and necessary entries were made in the register. However, he stated that he never made any complaint against the accused for non supply of wheat. PW-4 Liaq Ram also stated similarly that the wheat stock was issued by the accused and they used to make entry in the relevant register. However, he had not taken any wheat under PDS scheme. He also did not make any complaint in regard to non receipt of wheat quota.

PW-5 Kundan Singh, salesman of a society stated that they used to deposit money in the treasury and thereafter used to take wheat. He never made any complaint for non supply of wheat. To the similar effect is the statement of PW-6 Khazan Singh and PW-7 Amar Singh and these statements are not very material.

PW-8 Vishnu Dutt, the then Tehsildar was one of the members of the Committee who broke the locks of the godown took into possession the articles and list Ex.PW8/A and Ex.PW8/B were prepared. PW-11 Naresh Vikram is the witness and a member of the said committee.

PW-12 Prem Kumar Senior Assistant from DFSC office has stated that he is conversant with the handwriting of the accused. The wheat was received by the accused vide weight check memos Ex.PW12/A to Ex.PW12/C, vide receipts which are written by the accused and are in his hand. PW-13 Surinder Mohan Ghai, Inspector posted at Nahan during 1995 had sent the wheat through weight check memos Ex.PW12/A to Ex.PW12/C, which were issued by him. He stated that the wheat was received by the accused at Shillai and there is stamp of Inspector, Food & Civil Supplies but he can not recognize the signatures of the accused.

However, his statement that wheat was received by the accused at Shillai goes un rebutted.

PW-14 Babu Ram, President of Gram Panchayat Nahan is a witness to the taking of specimen signatures of accused Ex.PW14/A. The sanction was accorded by PW-19 K.C.Verma for prosecution of the accused. PW-20 Trilochan Joshi, Assistant Government Examiner of Questioned Documents has stated that the enclosed writings and signatures have been written by one and the same person which is Ex.PW20/B.

PW-25 Ramesh Kumar, a civil supplies contractor has stated that he owned truck and the wheat was being sent from FCI godown Nahan for destination and the driver used to deliver the goods to the Inspector who used to issue the receipts later on. He proved the signatures of his driver and stated that weight check memos are Ex.PW12/A to Ex.PW12/C and bear signatures of the accused on these memos. There was no specific suggestion put to him that these memos did not bear the signatures of the accused.

The fact that the appellant was posted as Inspector, Food and Supplies at Shillai has not been disputed in the evidence. The fact that wheat stocks were sent through these trucks stands established and there is sufficient evidence also on record that these bills vide which the wheat stock was sent bear the signatures of the appellant for which there is expert evidence and other evidence also on record as discussed above. In cross-examination of the witness this fact was not disputed that the signatures of the appellant are not there on these bills. The accused in his statement under Section 313 Cr.P.C. denied having been received the wheat stock but in regard to his signatures on the bills Ex.PW12/A to Ex.PW12/C he simply stated that these are incorrect and did not take any specific plea as argued by learned counsel for the appellant and these

signatures were procured from him by exercising pressure since the accused had simply stated that it is incorrect that these documents bear his signatures.

The accused in his defence had examined DW-1 Bhushan Lal, Junior Assistant to prove that he was on casual leave from 20.9.1995 to 22.9.1995 which was rejected by the office and he was also informed accordingly and the copy of telegram is Ex.PB. DW-2 Sheesh Ram the then DFSC Nahan rather clearly stated that the wheat stocks were received by the accused on 23.9.1995 and 24.9.1995. He also stated that the accused is working under him and he can recognize the signatures of the accused which are there on Ex.PW12/A to Ex.PW12/C though he can not say about the handwriting. However, this witness has also rather supported the case of the prosecution instead of the accused.

DW-3 N.R.Kaundal, Superintendent from the Food and Civil Supplies office has proved the enquiry report, charge sheet etc. and the letter dated 7.3.1998 sanctioning the previous leave which to my mind is not helpful to the accused.

On appraisal of the evidence led by the prosecution as well as the accused, including the statement under Section 313 Cr.P.C. made by the appellant, it is clear that the appellant had received the wheat stock on different dates and his signatures are there on the bills sent in this regard and proved in evidence. He has taken the plea that he had applied for medical leave, firstly for casual leave which was rejected and even if for arguments sake it is admitted that as per the sanction order passed subsequently he was on leave on that day, but that is not material since if a person is present in office inspite of sanction of the leave or after having applied for leave but if he still continues working, he can not escape his liability subsequently by claiming that he was on leave or had applied for leave on the relevant date. It was rightly submitted by learned Additional

Advocate General that the fact of leave having been applied was not in the knowledge of the truck driver who came to deliver the wheat stock and since the appellant was found present in the office or outside the office and was known in the area that he was posted as Inspector, Food & Supplies, he took charge of the wheat stock as per his signatures appended by him on these bills. The material question is whether he received the wheat stock or not and the evidence led clearly proves his signatures on these bills vide which he had received the stock but no registers were produced by him to show that he had made the entry in the relevant registers or had sent the wheat stock to different depot holders and on which date. Once he had received the wheat stock it was for him to have accounted for the said stock either by sending the stock to the depot holders or had deposited the sale proceeds subsequently after sale. However, he deposited the sale proceeds after sufficient lapse of time in government treasury. To substantiate his pleas that the prosecution had failed to prove their case, the learned counsel for the appellant had relied upon the following decisions.

The decision in **Dadarao vs. The State of Maharashtra,** (1974)3 SCC 630, shows that it was observed by their Lordships that there was no reliable and direct evidence of entrustment of the money to the appellant and also absence of indirect evidence and failure of prosecution to show the manner of keeping accounts .It was held that mere production of entry in books not conclusive since there was reasonable explanation by appellant.

The decision in **Roshan Lal Raina vs. State of Jammu and Kashmir**, AIR 1983 SC 631, shows that in an offence under Section 409 IPC proof of entrustment of money is condition precedent.

The decision in **Janeshwar Das Aggarwal vs. State of U.P**., AIR 1981 SC 1646, shows that before a conviction under Section 409 IPC can

be recorded the prosecution must prove two essential facts: (1) the factum of entrustment and (2) the factum of misappropriation of the entrusted articles.

In all the above mentioned cases the observations were made by their Lordships keeping in view the peculiar facts of each of the cases and the facts of present case are quite different. In the present case the receipt of wheat by the accused has been clearly proved by oral as well as documentary evidence and accused has failed to offer any explanation for his signatures which are there on weight check memos Ex.PW12/A to Ex.PW12/C which fact stands established from evidence. The accused has not given any plausible explanation or proof as to under what circumstances his signatures are appearing on these documents and the only inference that can be drawn is that he was posted at the relevant time at the depot and had received the wheat under his signatures. The fact that he failed to deposit the amount or account for the wheat that was dispatched to the depot holders and the fact that he subsequently deposited the amount on 30.1.1996 in Govt. treasury at Rajgarh clearly proves that he had misappropriated this amount and had not accounted for the wheat or deposited the cash realized after sale of the wheat. The findings recorded by the learned trial court suffer from no infirmity.

Coming to the plea of non examination of driver, the driver was not a material witness who had only transported the wheat. But the actual receipt of the wheat was to be proved by the prosecution which was clearly established from the evidence and non examination of the driver or the official posted at the barrier does not affect the merits of the case. The guilt of the appellant stands clearly established beyond any reasonable doubt and the finding recorded by the learned trial court holding the appellant guilty under both the sections are liable to be affirmed which are affirmed accordingly.

Coming to the sentence imposed by the learned trial court, no argument was advanced by the learned counsel for the appellant. There is nothing on record to show as to why the appellant deserves leniency since he was not an illiterate person and was posted in the rank of Inspector and was well aware that in case he misappropriates wheat or cash he will be liable for the same and the learned trial court has already taken pittance upon the appellant and has imposed R.I. for 3 years and fine of Rs.5000/- and in default of payment of fine, simple imprisonment for 6 months under section 409 IPC and R.I. for 2 years and fine of Rs.2000/- and in default of payment of fine S.I. for 3 months under Section 13(2) of the Prevention of Corruption Act, which findings do not call for any interference by this Court. The appeal filed by the appellant is dismissed. Copy of the judgment be sent along with record to the learned trial court who shall take steps that the appellant serves the sentence awarded to him since he is on bail and arrest warrants shall be issued against him by learned trial court.

April 19 ,2007(g) **(V.K.Ahuja),J**